**Court No.2**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**A.O. No. 352 of 2002**

The New India Assurance Company Ltd.,
through its Divisional Manager, Divisional
Office, Opposite Judge Court, Nainital Road,
Haldwani (Nainital).

..... Appellant

**Versus**

(1)Smt.Durga Devi
W/o late Pooran Chandra Mehtolia,
R/o Jai Durga Colony, Nababi Road.
Haldwani (Nainital).
(2)Sri Girish Kumar S/o Shiv Raj,
R/o Penth Parao, Ramnagar (Nainital).

..... Respondents.

**.....**

**Sri Tanveer Alam Khan, learned counsel for the appellant.**

**Date: 27th Aug.,2004.**

**Hon'ble P.C. Verma,J.**
**Hon'ble B.S. Verma,J.**

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 25.10.2002 passed by the Motor Accident Claims Tribunal/District Judge, Nainital in Motor Accident Claim Case No. 202 of 2000, whereby the appellant-New India Assurance Company has been directed to pay Rs. 4,00,000/- as compensation to the claimants alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 07.01.2000 Pooran Chandra Mehtolia, husband of the claimant, was going to ViaS in connection of his work as contractor and was travelling in tanker bearing registration No. DL-1GA-4475. When the said Tanker reached near Chan Lan at Bhatwaro bend, it fell into a ditch due to the

negligent driving of its driver. Sri Pooran Chandra Mehtolia died on the spot. He was about 50 years of age and was hale and hearty at the time of accident. It was alleged that he was running a factory and was also doing contract work. From both the sources he used to earn Rs. 20,000/- per month. The wife of the deceased filed a claim petition under before the Tribunal for a claim of Rs. 4,80,000/-.

3- In the written statement filed by the owner of the Tanker he admitted the accident and stated that the vehicle in question was insured with the Insurance Company at the time of accident. The Insurance Company in its written statement denied all the allegations of the claim petition. On the pleadings of the parties, the Tribunal framed necessary issues and on the basis of evidence allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the deceased was neither the owner of the goods nor the labourer. He was unauthorised passenger in Tanker and, therefore, the Insurance Company cannot be held liable to pay the compensation.

5- We have gone through the material on record and perused the impugned judgment. We are of the opinion that the Insurance Company only on that contention cannot be absolved from its liability to pay the compensation. We are fortified in our view by the verdict of the Apex Court in the case of *National Insurance Company Ltd. Vs. Baljit Kaur and others; (2004) 2 S.C.C. page 1,* in which the Apex Court has dealt with the payment of compensation to the gratuitous passengers. In para-21 of the said judgment the Apex Court directed the Insurance company to satisfy the award amount in favour of the claimant if already not satisfied and receive the same from

the owner of the vehicle. Para-21 of the aforesaid judgment is reproduced as under:-

> "The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but is may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in term whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

6- In view of the aforesaid directions of the Supreme Court, under Article 142 of the Constitution of India, to meet the ends of justice, the Insurance Company was directed to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the award and shall recover the amount of the same from the insured/owner if the liability of the insured/owner is fixed by the executing court i.e. Motor Accident Claims Tribunal.

7- For the aforesaid reasons, the appeal is disposed of accordingly subject to the directions aforementioned. The amount of compensation, if deposited in the appeal, shall be remitted to the concerned Motor Accident Claims Tribunal.

**( B.S.Verma, J.)** **( P.C.Verma, J.)**

P.Singh